

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ROBERT PENDERGRASS,
ERIC KOECHLING, and
JAMES PATTON

Plaintiff,

v.

BI-STATE UTILITIES CO.,

Defendant.

)
)
)
) Case No. _____

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) CASE BELOW:
) Circuit Court of St. Louis County, Missouri
) Case No. 18SL-CC02018

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) **JURY TRIAL DEMANDED**
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NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Bi-State Utilities Co. (“Defendant”) hereby gives notice of the removal of this action to this Court from the Circuit Court of St. Louis County, Missouri. The basis for this Court’s jurisdiction is federal question under 28 U.S.C. § 1331 and the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”), and supplemental jurisdiction under 28 U.S.C. § 1367. The grounds for removal are as follows:

1. On May 17, 2018, Plaintiffs Robert Pendergrass, Eric Koechling and James Patton (“Plaintiffs”) commenced this action by filing a Petition in the Circuit Court of St. Louis County, Missouri captioned as *Robert Pendergrass et al. v. Bi-State Utilities Co.*, Case No. 18SL-CC02018 (the “State Court Action”).

2. As set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1441 because Defendant has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1367(a).

I. Defendant Bi-State Utilities Has Satisfied the Procedural Requirements for Removal.

3. The Summons and Petition were served upon Defendant Bi-State Utilities on June 7, 2018 – the date Defendant first received a copy of the initial pleading setting forth the claim for relief upon which the action is based. Accordingly, Defendant has filed this Notice of Removal within 30 days of receipt, through service or otherwise, of the Petition, and therefore has timely filed for removal pursuant to 28 U.S.C § 1446(b).

4. The Circuit Court of St. Louis County, Missouri is located within the Eastern District of Missouri, in the Eastern Division. 28 U.S.C. § 105; Local Rule 2.07(A)(1). Thus, venue is proper in this Court because it is the “district and division embracing the place where such [state court] action is pending.” 28 U.S.C. § 1441(a).

5. No previous application has been made for the relief requested by this Notice.

6. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-02.03, copies of all pleadings filed in the State Court Action are attached hereto as **Exhibit A**.

7. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 81-02.03, a copy of this Notice of Removal is being served upon counsel for Plaintiffs and a copy is being filed with the Clerk of the Circuit Court of St. Louis County, Missouri.

8. As required by Local Rules 81-02.03 and 03-02.02, an Original Filing Form, Civil Cover Sheet, and Disclosure of Corporate Interest Certificate are being filed contemporaneously with this Notice of Removal.

II. Removal is Proper Because This Court Has Subject Matter Jurisdiction Pursuant to 28 U.S.C. §§ 1331, 1367 and 1441.

9. Plaintiffs allege that they are former employees of Defendant Bi-State Utilities. Petition (Exhibit A) at ¶¶ 20, 30, 38.

10. Plaintiffs seek in their First Cause of Action of the Petition to recover damages allegedly due to them as a result of alleged violations of the FLSA during their employment for Defendant Bi-State Utilities.

11. Therefore, removal is proper under 28 U.S.C. § 1441(a), which provides that a defendant may remove any civil action filed in a state court of which this Court has “original jurisdiction”

12. Original jurisdiction in this case exists by reason of 28 U.S.C. § 1331 and the FLSA, 29 U.S.C. § 201 *et seq.*, in that Plaintiffs’ claims arise under the FLSA, a law of the United States.

13. Plaintiffs also assert a claim under the Missouri Minimum Wage Law (Mo. Rev. Stat. § 290.500 *et seq.*), and common law claims pursuant to quantum meruit and unjust enrichment theories of recovery. The Court has supplemental jurisdiction over these claims under 28 U.S.C. § 1367(a) because they are so related to the FLSA claims that they “form part of the same case or controversy under Article III of the United States Constitution.” In particular, each state law claim is based upon the exact same conduct allegedly giving rise to Plaintiffs’ FLSA claim, namely, Defendants’ alleged failure to pay for all time worked. *See* Petition (Exhibit A) at ¶¶ 49-80. Therefore, these state law claims are properly removed along with the FLSA claim. *See* 28 U.S.C. §§ 1367(a), 1441(a).

14. Plaintiff Pendergrass also asserts a claim under Missouri’s Workers’ Compensation Law (Mo. Rev. Stat. § 287.780). This is a claim “arising under the workmen’s compensation laws” of Missouri and is nonremovable under 28 U.S.C. § 1445(c).

15. Under 28 U.S.C. § 1441(c), if a civil action includes (1) “a claim arising under the Constitution, laws, or treaties of the United States” and (2) “a claim... that has been made

nonremovable by statute,” then “the entire action may be removed if the action would be removable without the inclusion of the [nonremovable] claim.” 28 U.S.C. § 1441(c). Therefore, removal of Plaintiff Pendergrass’s claim under Missouri’s Workers’ Compensation Law is proper under 28 U.S.C. § 1441(c).

16. Therefore, under the provisions of 28 U.S.C. § 1441(c) and any other applicable statutes with which Defendants are in compliance, this Action is removable to the United States District Court for the Eastern District of Missouri.

WHEREFORE, Defendant gives notice of the removal of the State Court Action to this Court pursuant to 28 U.S.C. § 1441.

Respectfully submitted,

STINSON LEONARD STREET LLP

By /s/ Alexis M. Gabrielson

Johnny S. Wang, #57748
Alexis M. Gabrielson, #70618
7700 Forsyth Blvd., Suite 1100
St. Louis, Missouri 63105
(314) 863-0800 telephone
(314) 863-9388 facsimile
johnny.wang@stinson.com
alexis.gabrielson@stinson.com

Attorneys for Defendant

Certificate of Service

I certify that on July 5, 2018, the foregoing was filed with the Court's ECF system, and that a copy of this document was sent by email and U.S. Mail to the following:

S. Cody Reinberg
9666 Olive Blvd., Suite 202A
St. Louis, Missouri 63132
314-391-9557
creinberg@hkm.com

Attorneys for Plaintiffs

/s/ Alexis M. Gabrielson
Attorneys for Defendant